

ENTERED

September 12, 2023

Nathan Ochsner, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

DOREEN MITCHELL,

Plaintiff,

v.

CALEB SALGADO AND DISH
NETWORK, L.L.C.,

Defendants.

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CIVIL ACTION NO. H-23-1247

MEMORANDUM AND ORDER

The defendants, DISH Network, LLC and Caleb Salgado, have moved to dismiss Doreen Mitchell's first amended complaint under Rule 12(b)(1), and Mitchell has moved for leave to amend. (Docket Entry Nos. 13, 17). For the reasons set out below, Mitchell's motion for leave to amend is granted, and the motion to dismiss is denied.

I. The Legal Standard

"The party seeking to invoke federal diversity jurisdiction bears the burden of establishing both that the parties are diverse and that the amount in controversy exceeds \$75,000." *Frye v. Anadarko Petroleum Corp.*, 953 F.3d 285, 293 (5th Cir. 2019). If the complaint does not allege a specific amount of damages, the plaintiff "must prove by a preponderance of the evidence that the amount in controversy exceeds the jurisdictional amount." *St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998). The court should determine whether it is "facially apparent" from the complaint that the claims exceed the jurisdictional amount. *Id.* If it is not, the court may rely on "summary judgment-type" evidence to determine the amount in controversy." *Id.*

II. Analysis

The defendants first argue that there is no diversity of citizenship because (1) both Salgado and Mitchell are Texas citizens, and (2) the complaint does not identify the citizenship of DISH's members. (Docket Entry No. 13 at 3–2).

The first argument is unpersuasive. Mitchell's amended complaint states that “Former Defendant, **CALEB SALGADO**, has been dismissed from this lawsuit pending Court approval.” (Docket Entry No. 11 at ¶ 1.1). The court approves the dismissal of Salgado.

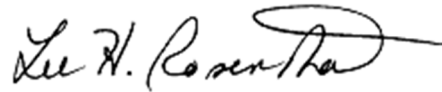
The second argument is persuasive. An LLC's citizenship “is determined by the citizenship of all of its members.” *MidCap Media Fin., L.L.C. v. Pathway Data, Inc.*, 929 F.3d 310, 314 (5th Cir. 2019). To establish diversity jurisdiction, a plaintiff “must specifically allege the citizenship of every member of [the] LLC.” *Id.* The amended complaint does not so allege. Instead, it states only that “Defendant, **DISH NETWORK, L.L.C.**, is a Colorado Foreign Limited Liability Company” (Docket Entry No. 11 at ¶ 1.2). Mitchell asks for leave to amend her complaint to cure this defect, or, alternatively, “to conduct jurisdictional discovery on the issue the Defendants have raised.” (Docket Entry No. 16 at 5). Leave to amend would not cure this defect, because Mitchell's second amended complaint also fails to allege the citizenship of DISH's members. (*See* Docket Entry No. 17-1). The court orders DISH to produce information sufficient to show the citizenship of its members. *See In re MPF Holdings US LLC*, 701 F.3d 449, 457 (5th Cir. 2012).

Next, the defendants argue that Mitchell has not alleged facts showing that the amount in controversy exceeds \$75,000. (Docket Entry No. 13 at 4). Although the amended complaint does not allege a specific amount of damages, it does allege that Mitchell suffered “serious and disabling injuries” “requiring extensive medical treatment.” (Docket Entry No. 11 at ¶¶ 3.1, 3.3). Further,

Mitchell's affidavit details her damages, which exceed \$75,000. (Docket Entry No. 61-1 at ¶ 6). This is sufficient to satisfy the amount-in-controversy requirement. *See Greenberg*, 134 F.3d at 1253; *Luckett v. Delta Airlines, Inc.*, 171 F.3d 295, 298 (5th Cir. 1999).

The motion to dismiss is denied. Mitchell's motion for leave to amend, (Docket Entry No. 17), which the defendants do not oppose, is granted. Salgado is dismissed as a party to this litigation.

SIGNED on September 12, 2023, at Houston, Texas.

A handwritten signature in black ink, reading "Lee H. Rosenthal". The signature is fluid and cursive, with a large, sweeping loop at the end of the last name.

Lee H. Rosenthal
United States District Judge